

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
ALEXANDRIA FERNANDES,

Plaintiff,

-v-

GARY A. HERJO,

Defendant.

CIVIL ACTION NO.: 23 Civ. 3078 (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

Before the Court is Defendant's March 22, 2024 letter concerning his anticipated deposition of "plaintiff's surgeon, Dr. Krosser" (the "Deposition"). (ECF No. 40). Defendant states that he was "contacted by Dr. Krosser's attorney who [] advised earlier this week that Dr. Krosser wants \$5,000 to appear for" the Deposition, which will take place remotely. (Id.) Defendant "believe[s] that that fee is excessive for what should be a 60-to-90-minute deposition[,] and requests "that the court set a reasonable fee for Dr. Krosser's [D]eposition pursuant to FRCP 26(b)(4)." (Id. (the "Request")).

The Request is DENIED WITHOUT PREJUDICE to renewal, if appropriate, following completion of the Deposition. See Ajasin v. Ortiz, No. 19 Civ. 6814 (RA) (JLC), 2021 WL 1437551, at *1 (S.D.N.Y. Apr. 16, 2021) ("[I]t is well-settled that parties seeking court intervention to determine a reasonable fee for an expert deposition should do so after the deposition, not before it has taken place." (emphasis added)); Conte v. Newsday, Inc., No. 06 Civ. 4859 (JFB) (ETB), 2011 WL 3511071, at *2 (E.D.N.Y. Aug. 10, 2011) ("The rule and the case law makes it clear that the parties seeking court intervention to determine a reasonable fee for an expert deposition should do so retrospectively—that is, after the deposition has taken place."); see also Johnson v. Spirit

Airlines, Inc., No. 07 Civ.1874 (FB) (JO), 2008 WL 1995117 (E.D.N.Y. 2008) (expert witness “may not insist on advance payment, and may not set a flat fee before he knows what he will be called upon to do; he may instead charge only a reasonable hourly fee.”).

After the Deposition, counsel for Defendant and Dr. Kosser shall meet and confer to agree on a reasonable fee for the Deposition. If the parties cannot agree, Defendant may renew the Request, with citations to specific authority to justify the requested fee. See Ajasin, 2021 WL 1437551, at *2.

Dated: New York, New York
March 25, 2024

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge